

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 760 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PINKI @ RANJANA YOGENBHAI SHARMA

Versus

MEHULBHAI PANDYA

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Appearance:

MR BM GUPTA for Petitioner

MR PK JANI for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/09/98

ORAL JUDGEMENT

1. Heard Mr.B.M.Gupta appearing on behalf of petitioner. Rule. Mr.P.K.Jani who has appeared for respondent No.1 in response to notice issued vide earlier order waives service of rule on behalf of respondent No.1. Mr.P.G.Desai, Ld.PP appears and waives service of rule on behalf of respondent No.2-State. By consent of

parties petition is taken up for final hearing.

2. The petitioner has challenged the legality, validity and propriety of the order passed by Ld.Metropolitan Magistrate, Court No.9, Ahmedabad dated 13.10.97 passed in the proceedings of Cri.Case No.3124/96 and has also challenged the order passed by the Ld.Addl.Sessions Judge, Court No.14, Ahmedabad city in the proceedings of Cri.Revn.A No.3/98.

3. The present petitioner is prosecuted by respondent No.1 through Criminal Case No.3124/96 a private complaint filed in the court of Metropolitan Magistrate, Court No.9, Ahmedabad in respect to the offence made punishable under section 138 of Negotiable Instruments Act (hereinafter referred to as "the Act"). The Court of Metropolitan Magistrate after verification of complaint had issued summons to the present petitioner. The petitioner, thereafter, appeared before the court and moved application, dated 26.2.1997 claiming that the proceedings against the present petitioner be dropped and the petitioner as accused in the said criminal case be discharged under section 258 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code").

It appears that the Ld.Metropolitan Magistrate, Court No.9, Ahmedabad heard the said application and vide impugned order dated 13.10.1997 rejected the application of the present petitioner. That the petitioner carried the matter to the City Sessions Court, Ahmedabad by filing Criminal Revision Application No.3/98. That the Ld.Addl.City Sessions Judge, Court No.14, Ahmedabad vide impugned order, dated 4.2.1998 rejected the said revision application and the petitioner has approached this court as stated hereinabove.

4. Mr.Gupta, Ld.Adv.for the petitioner has submitted that the present petitioner has replied to the demand notice of respondent No.1, dated 9.8.96 by sending reply dated 24.8.96 through his advocate and explaining the fact that the said cheque which is alleged to have been dishonoured on presentation to the bank and for which demand is made was agreed by the party as cancelled because the petitioner had issued another cheque for the said amount of Rs.30,000/- in lieu of said cheque to respondent No.1. That the respondent No.1 had failed to return the original cheque dishonoured by his bank despite the demand made by the petitioner and subsequently same was misused by presenting again to the

bank for which present complaint has been filed. According to Mr.Gupta as the debt of respondent No.1 paid by the petitioner by issuing subsequent cheque in lieu of previous dishonoured cheque, the respondent No.1 had no cause of action to initiate any proceeding against the petitioner and as such the petitioner approached the Court of Ld.Metropolitan Magistrate by filing discharge application in the proceedings of Criminal Case No.3124/96. That the Ld.Metropolitan Magistrate failed to consider the observations made by the Supreme Court in the case of K.M.MATHEW vs STATE OF KERALA reported in AIR 1992 SC 2206 and has failed to appreciate the explanation stated by the present petitioner in reply to the demand notice of the respondent No.1 as reiterated in the discharge application. Shri Gupta has also submitted that the Ld.Addl.Sessions Judge has also erred by relying on the observations made by the Supreme Court in the case of MRS.DHANALAKSHMI vs R.PRASANNAKUMAR reported in 1990 Cri.Law Journal 320 which has no application to the facts involved in the present matter. In short, Shri Gupta has submitted that the reply to the demand notice along with the certificate of the Bank disclosing the fact that the subsequent cheque issued by the petitioner in favour of respondent No.1 was cleared have sufficiently supported the defence of the present petitioner and destroyed the case of the complainant. That the trial court as well as the court of Ld.Addl.Sessions Judge should have held that the respondent No.1 having received the due amount from the petitioner had no cause to file the complaint and ought to have discharged the present petitioner and ought to have dropped the proceedings of the said case.

5. It is undisputed that the Criminal Case No.3124/96 is instituted by private complainant and on verification recorded by the Ld.Magistrate as he was satisfied that prima facie an offence under section 138 of the Act is disclosed against the present petitioner the process was issued. That the accused having produced the reply of notice and contending through the application that in view of the contents stated in reply of notice no offence could have taken place is a disputed question of fact and could be only decided at the time of trial and not on prima facie appraisal of the document. Under the circumstances, I do not find any error either of law or fact committed by the Court of Ld.Metropolitan Magistrate, Court No.9, Ahmedabad while passing impugned order, dated 13.10.97 in the matter of Criminal Case No.3124/96 as well as order, dated 4.2.98 passed by the Ld.Addl.Sessions Judge, Court No.19, Ahmedabad in proceedings of Criminal Revision Application No.3/98. On the basis of the same, I hold that the present petition

can not be sustained in law and deserves to be rejected.  
Petition stands disposed of as rejected. Rule is  
discharged. Interim relief granted earlier stands  
vacated. No costs.

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